

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
NORTHERN DIVISION

JESSICA SMITH,

Plaintiff,

vs.

JIM SUMNER,

Defendant.

)
)
)
)
)
)
)
)
)
)

Case No. 2:11CV39 RWS

MEMORANDUM AND ORDER

This matter is before me on plaintiff's motion to dismiss defendant's affirmative defenses. Plaintiff claims it is entitled to bring a motion under Fed. R. Civ. P. 12(b)(6) to dismiss affirmative defenses raised in defendant's answer more than a year ago. Plaintiff is wrong. Federal Rule 12(b)(6) applies to defenses to a claim for relief. Affirmative defenses are not claims for relief; they are defenses to claims for relief. See Wells Fargo & Co. v. U.S., 750 F. Supp. 2d 1049, 1051 (D. Minn. 2010) ("An affirmative defense is not a claim for relief . . ."). To challenge an insufficient affirmative defense, a party must file a motion to strike under Rule 12(f) "within 21 days after being served with the pleading." As plaintiff waited more than one year to file this motion, even if I treated it as a motion to strike, it would still be untimely.¹

Accordingly,

¹Even if plaintiff had properly brought her challenge to defendant's affirmative defenses, her argument would still fail because "neither Rule 8(a)(2) [which governs the pleading of affirmative defenses] nor any other rule requires a defendant to plead facts showing that the plaintiff is not entitled to relief." Wells Fargo, 750 F. Supp. 2d at 1051 (internal quotation marks and citations omitted).

IT IS HEREBY ORDERED that plaintiff's motion to dismiss [#34] is denied.

A handwritten signature in black ink, appearing to read "Sippel" followed by a stylized flourish.

RODNEY W. SIPPEL
UNITED STATES DISTRICT JUDGE

Dated this 10th day of October, 2012.